



ENVIRONMENTAL PROTECTION AGENCY

6560-50-P

40 CFR Part 52

[Docket No. EPA-R02-OAR-2013-0618; FRL-9903-24-Region 2]

Approval and Promulgation of Air Quality Implementation Plans; New York; Determination of
Clean Data for the 1987 PM₁₀ Standard for the New York County Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is determining that the New York County nonattainment area in New York is attaining the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM₁₀) based on certified, quality-assured ambient air monitoring data for the years 2010 through 2012. EPA is also determining that New York's obligation to make submissions to meet certain Clean Air Act requirements related to attainment of the NAAQS is not applicable for as long as the New York County nonattainment area continues to attain the NAAQS.

DATES: This rule is effective on [Insert date 30 days from date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2013-0618. All documents in the docket are listed in the <http://www.regulations.gov> web

site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [http:// www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Programs Branch, Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007.

FOR FURTHER INFORMATION CONTACT:

If you have questions concerning today's final action, please contact Henry Feingersh, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, telephone number (212)637-3382, fax number (212) 637-3901, email feingersh.henry@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What Action Is EPA Taking?

EPA is determining that the New York County nonattainment area in New York is attaining the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM₁₀). This determination is based upon certified, quality-assured ambient air monitoring data that show the area has monitored attainment of the PM₁₀ NAAQS for the years 2010 through 2012. Actually, New York County has been attaining the PM₁₀ standard since 1992. Specific details regarding the determination

and the rationale for EPA's action are explained in the proposed rulemaking published in the Federal Register (FR) on September 13, 2013 (78 FR 56633). EPA's determination is being made in accordance with its longstanding interpretation under the Clean Data Policy, and with previously issued rules and determinations of attainment. A description of the Clean Data Policy with respect to the PM₁₀ standard can be seen in 78 FR 56633.

II. What Comments did EPA receive on its Proposal and what is EPA's Response?

EPA did not receive any comments on the proposal.

III. What is EPA's Final Action?

This final action, in accordance with the Clean Data Policy, which is reflected in 40 CFR 51.1004(c), suspends the requirements for the State of New York, to submit an attainment demonstration, associated reasonably available control measures, reasonable further progress plans, and contingency measures for the New York County PM₁₀ nonattainment area for so long as the area continues to attain the PM₁₀ NAAQS.

This action does not constitute a redesignation to attainment under section 107(d)(3) of the CAA, because the area does not have an approved maintenance plan as required under section 175A of the CAA. Nor is it a determination that the area has met the other requirements for redesignation. The designation status of the area remains nonattainment for the PM₁₀ NAAQS until such time as EPA determines that the area, and/or a State portion thereof, meets the CAA requirements for redesignation to attainment.

EPA is determining that the New York County PM₁₀ nonattainment area has attained both the 24-hour PM₁₀ NAAQS and the revoked annual PM₁₀ NAAQS. This determination is based upon certified, quality-assured ambient air monitoring data that show that the area has monitored attainment of the PM₁₀ NAAQS for the 2010-2012 monitoring period. Preliminary air monitoring data available for 2013 are consistent with the determination that the New York County area PM₁₀ nonattainment area is continuing to meet the PM₁₀ NAAQS. This final action, in accordance with the Clean Data Policy, suspends the requirements for the State of New York to submit, for the New York County PM₁₀ nonattainment area, an attainment demonstration, associated reasonably available control measures, reasonable further progress plans, and contingency measures in the area for so long as the area continues to attain the PM₁₀ NAAQS. If EPA subsequently determines, after notice-and-comment rulemaking in the Federal Register, that the New York County PM₁₀ nonattainment area has violated the PM₁₀ NAAQS, the basis for the suspension of the specific requirements would no longer exist for the area, and New York would thereafter have to address the applicable requirements for the PM₁₀ NAAQS.

IV. Statutory and Executive Order Reviews

This action makes an attainment determination based on air quality and results in the suspension of certain Federal requirements, and it does not impose additional requirements beyond those imposed by state law. For these reasons, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: November 8, 2013

Judith A. Enck,
Regional Administrator
Region 2

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart HH—New York

2. Section 52.1678 is amended by adding paragraph (g) to read as follows:

§ 52.1678 Control strategy and regulations: Particulate matter.

* * * * *

(g) Determination of Attainment. EPA has determined, as of [Insert date of publication in the Federal Register], that the New York County fine particle (PM₁₀) nonattainment area has attained the PM₁₀ National Ambient Air Quality Standard. This determination suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, reasonable further progress plans, and contingency measures for as long as the area continues to attain the PM₁₀ NAAQS.

[FR Doc. 2013-28655 Filed 11/29/2013 at 8:45 am; Publication Date: 12/02/2013]